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Case No: RG17C00545 & RG18C00132
IN THE FAMILY COURT

6 July 2018

Before:

HIS HONOUR JUDGE MORADIFAR

In the matter of:

Re M (Children: Abuse)

JUDGMENT

Mr Simon Miller counsel on behalf of the Applicant local authority
Miss Mai-Ling savage instructed by Campbell Hooper Solicitors appeared on
behalf of the mother

Miss Isabelle Watson counsel instructed by Clifford Ingram Solicitors...
appeared on behalf of the father

Miss Seona Myerscough solicitor on behalf of the children through their
guardian Miss Skye Frain

Introductions

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1. On 10 May 2017, the local authority applied for care orders in respect of three children. I will identify them as ‘B’ who is 9 years and 5 months old having been born in 2008, ‘H’ who is 7 years and 9 months old having been born in 2010, and ‘L’ who is 6 years and 9 months old having been born in]2011. This case has suffered with great delay and now comes before me for a finding of fact hearing in respect of the allegations that the local authority is pursuing against the children’s parents. In this judgment, I will identify them as the mother and the father. The findings that the local authority is seeking to prove are contained within a very detailed schedule of findings. For the sake of brevity, I do not propose to set those out in detail in this judgment. However, those allegations may be broadly summarised as follows:-

(a) Chronic neglect that includes lack of boundaries, lack of consistent physical care, lack of emotional care, poor home conditions, delay in speech and language, exposure to domestic abuse, restricted access to food, abusive and harsh language.

(b) Physical abuse and over-chastisement.

(c) Soiling by H and L that is caused by chronic neglect, physical, sexual and emotional abusive parenting.

(d) Children displaying sexualised behaviour and over familiarity with strangers.

(e) Sexual abuse of the children by one or both of their parents.

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- (f) The parents allowing the children to be sexually abused by unknown males.
 - (g) Parents forcing the children to sexually abuse each other.
 - (h) The mother and/or the father failing to protect the children from being sexually abused by the other parent.
 - (i) The mother and/or the father failing to protect the children from being sexually abused by unknown males.
2. Prior to this hearing and during the course of the evidence, the parents have made a number of concessions to the findings that the local authority seeks to prove. Broadly, this includes acceptance that the children have suffered with physically and emotionally neglectful parenting. It further includes physical chastisement, inappropriate shouting and rough handling of the children. The parents both accept that B has displayed sexualised behaviour which has involved other children including his siblings. Both parents deny the children have exhibited any sexualised behaviour or behaviour that may be interpreted by an adult as sexual in their home. The main area of dispute between the parents and the local authority concerned the allegations of the children being sexually abused by one or both parents being forced to perpetrate sexual abuse on each other and being allowed to be sexually abused by unknown males.

The Law

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3. I am most grateful to the advocates who have made detail submissions on the law. I have summarised the relevant law by reference to the relevant authorities and attach the same in the first schedule to this judgment. The main principles are very helpfully summarised by Baker J in Re JS [2012] EWHC 1370 (Fam). Following this decision, Jackson J (as he then was) in Lancashire County Council v C, M and F (Children: Fact finding Hearing) [2014] EWFC 3 added a further item to this invaluable list of important considerations. Furthermore, I have applied the observations of the President of the Family Division in Re A (A child) [2016] 1 FLR 1.
4. I am not bound by the schedule of findings that the local authority seeks and can make such relevant findings as are appropriate based on the evidence. Finally each of the respondents has a right to a fair trial pursuant to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and this right cannot be interfered with unless it is pursuant to a legitimate aim, necessary, proportionate and in accordance with the law. I am most grateful to the mother's intermediary who has enabled her to fully and fairly participate in this hearing.

Background

5. The first documented involvement of the local authority with this family was in 2009 when the family lived together when B was the only child. At this stage, the local authority's concerns related to neglect and mother's poor mental health. Sadly, the parents' relationship did not last and the parents separated not long after L was born in 2011. By the end of the same year, the local authority's concerns had escalated to a level that

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led to it convening an initial child protection conference. The children were made the subject of child protection plans under the category of neglect. The concerns were at that stage expressed to be around inadequate supervision of the children and the children not being fed adequately. It is also noted that mother was struggling to cope with B's behaviour. In October 2012, B was the subject of a medical assessment by a consultant paediatrician who identified concerns about B's aggressive behaviour, poor concentration, hyperactivity and speech delay. The examining doctor, Dr Connell, did not believe that there were any underlying conditions that were capable of explaining those concerns. With the continuing concerns pre-proceedings were initiated in January 2013 and by July of the same year, L was reported to have difficulties with his expressive language skills. At around the same time, B was the subject of a further examination by Dr Connell. In the course of that examination, the mother is reported to complain about the father shouting at B and not "talking to him very much".

6. With the ever-escalating concerns about these children, the local authority issued its applications for public law orders in September 2013. Until that point, the father is reported to have had little engagement with the Children's Services. However, at the conclusion of those proceedings, the father was assessed as being a suitable carer for these children. That position was fortified by a court order which ensured that the children lived with the father. That order was accompanied by a supervision order in favour of the local authority which continued for six months. Finally, the local authority closed its case in respect of these children at the end of July 2014.

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7. On 11 November 2014 H's General Practitioner noted that H was soiling himself at around three to four times every week. The school also expressed concerns about this issue. On the same day, the first allegation of sexualised behaviour by B was raised at school. In the course of this incident, B is reported to have "told the little girl to put her finger up her brother's bottom". Sadly, this was the first of a great number of complaints of sexualised behaviour that has lasted over a number of years.
8. The difficulties in relation to H's soiling continued and were the subject of further medical examination in November and in December 2014. The outcome of the latter investigation concluded that H's difficulties in this regard were likely to be rooted in "significant changes" in the family and entering reception. In January 2015, the same practitioner, Dr Connell, identified all three children to have difficulties with speech and language delay, general developmental delay, limited concentration, over-activity, and, in H's case, soiling. In 2015, the local authority received three referrals around the acrimony in the parental relationship and two reports from a neighbour concerning the children being shouted at and "hit by their father". A single assessment at this stage did not identify any further role for the local authority.
9. In September 2016, the school made a referral to the local authority following allegations by B and L that they had been physically harmed at the hands of the parents. L further alleged that B had tried to bite his "bum and willy". In the course of the investigations that followed, L alleged that he had been assaulted with a spoon by his mother and B alleged that his father smacked him on the "bottom" if he does not go to

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sleep and that he does not like it when his mother washed his mouth out with soap. He confirmed that this happens when he swears. With the concerns escalating, the children were each placed on a child in need plan on 16 November 2016. On 7 December 2016, whilst at school, B alleged that his mother had thrown a fork at his foot which caused an injury to it. The head teacher is noted to have observed two cuts close together on B's foot. The children were interviewed by the police and B's version was somewhat corroborated by L. The mother denied the allegations but accepted that this may have happened accidentally. The father is also reported as stating that B was lying about the incident. Later in the same month, the school staff have noted that the father was handling H roughly by grabbing his arm twice and shouting at him. The school also expressed concerns that having discussed issues of B's sexualised behaviour at school, neither parent appeared to show any concern for the same. With the ever-increasing concerns, all three children were made the subject of child protection plans under the category of neglect on 22 December 2016.

10. In a child protection conference dated 28 February 2017, concerns about the children were noted to include lack of rules, lack of boundaries, developmental delay, B's sexualised behaviour, L's soiling, lack of explanation for B's behaviour and confusion in the children about the arrangements for contact with their mother. On 13 March 2017, whilst at school, B alleged that his father had pushed him in the bathroom causing him to fall and hit his head on the toilet which resulted in a cut. B is reported to have said that "he was not allowed to tell anyone". Father is reported as accepting that B had hit his head although this was not as the result of a push but that he had slipped. By April of the same year,

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concerns had been noted that the children were presenting as unclean and grubby. B is reported to have stated that sometimes he is told by his mother that he is not allowed to have breakfast or lunch.

11. The local authority continued to be concerned for the welfare of the children. With an apparent lack of sustained change, the local authority issued the current proceedings on 10 May 2017. The first entry concerning L soiling is recorded on 25 May 2017. The following day, a social worker visiting the children's home and noticed that the kitchen door had been padlocked. Mother explained that this was because the children were always helping themselves to food. The social worker observed the children as "disinhibited" with her having only met her for the first time on that day. The matter came before the court on 2 June 2017 for a contested interim care hearing with a plan that the children should be removed to foster care. That plan was approved and interim care orders were made. L and H were placed together in the same foster care and B placed in a separate foster placement.
12. The foster carers looking after B have an adult daughter who is a friend of the father. I note that B will have been familiar with her. Whilst in foster care, B is reported to have behaved in a sexual manner towards the foster carer and her daughter. Both the foster carer and those supervising contact have also observed father during the same period as being aggressive towards the children.
13. Whilst at the foster carers on 13 August 2017, H is reported to have reacted to the foster father by falling to the floor, curling up, covering his

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face with his hands. He is reported to have stated to the foster father that he thought the foster father might be his father who used to “hit him”.

14. For the sake of brevity I will not set out the detail of all of the allegations of sexual abuse. The detailed summary of those allegations are set out in the second schedule that is attached to this judgment. In summary, the first of the allegations was made by L to the foster father on 19 August 2017. This related to an allegation that a neighbour of the father who touched L’s private parts. In the same conversation, L also referred to B touching his private parts.
15. The children’s social worker attended a pre-arranged meeting in placement with B on 22 August 2017. During the course of this meeting, B is reported to have referred to his father shouting and being physically chastised by both of his parents. On the same day, the social worker visited H and L and undertook “direct work” on “keep safe”. L is reported to have said that B had touched his private parts and when he told his father, his father told him to go to his room. He was also told to keep things a secret and that B had told him to keep this a secret. H was asked and made no allegations.
16. On 25 August 2017, B’s foster carer raised concerns that every time she raises her arms, B appears to be “flinching almost as though he is expecting to be hit”. On the same day, L is reported to have commented on “bad touching” to his foster father. He is reported to have said that a man called Dan, who was their next door neighbour, had “hurt” his private parts. He has also reported that another person known as Nab had also tried to hurt him by strangling him.

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17. Three days later, on 28 August 2017, L is also recorded to make further allegations of a sexual nature that he says took place “at Daddy’s house”. The following day on 29 August 2017, both L and H are reported to have made further allegations of sexual abuse against their father, their mother and Dan.
18. This led to a pre-VRI assessment of H and L on 31 August 2017. In the course of this assessment, H is recorded as reporting physical abuse by his father that included slapping and punching, hitting his hands and feet and that Dad had hurt him at the seaside by punching front and back private parts. H stated that everybody including his siblings, parents, Nab and Ed were at the beach when this happened. L, in the course of his assessment, also referred to being punched and kicked in his private parts, his head and arm. He stated that D was next door to Daddy and also disclosed that D had hit his private parts although this may have happened at Daddy’s house in his bedroom. The matter came before the court again on 7 September to consider the issue of contact between the children and the parents. The court granted a Section 34(4) order permitting the local authority to withhold contact between the children and the parents and gave further directions.
19. On 6 September 2017, L alleged that he was sexually abused by his father, mother, Dan and Nab. He further stated that his siblings were present although they were not abused. His parents watched. “*B, Nab and Dan all had the same bedroom, he had his bed under the window. Dan and Nab wee’d on my face. And daddy too, he watched no and he said no. It was sticky wee not like mine very runny.*”

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20. In addition to that which I set out earlier, H and L's allegations of sexual and physical abuse continued and are noted to have been made between 9 September to 12 December 2017 that include ten occasions where such allegations are made.
21. B's foster carers raised concerns about his inappropriate behaviour towards adults within the foster home that they have described as sexualised and "seductive".
22. Following the court's approval of the cessation in contact between the children and their parents in September 2017, contact between the parents and the younger two children was re-established in December 2017. The proceedings have progressed very slowly and comes before me for a finding of fact hearing.

Evidence

23. In addition to reading the case papers that are within the bundles, I have observed the video recorded interviews of L and H and listened to the recorded interviews of the parents. Additionally, I have had the benefit of hearing from eight witnesses in this matter. These were the children's allocated social worker, her team manager, two foster carer social workers from Fusion Fostering who are assigned to the foster carers for L and H, their foster father, their foster mother, the mother and finally the father. I will set out the summary of the evidence of each of these witnesses below.

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Oral evidence

24. The first of these witnesses was the children's allocated social worker who confirmed the accuracy of her six statements and two reports that are found in the section G of the bundle. The social worker confirmed that she has had all the appropriate training for her "level" as a social worker. She was aware not to ask a leading question of children and to make accurate and, where possible, contemporaneous notes. She however explained that, when dealing with children, it is not always wise or appropriate to be making contemporaneous notes. In those circumstances, she will make her notes as soon as possible after the interaction with the relevant child. Those notes will be entered onto the system. She confirmed that in any event, all of the recordings that are on the system that have been made by her, have been made by reference to any notes that she had made either contemporaneously or as soon as possible after an event. She further explained that she has not had any training in conducting interviews with the children in accordance with the Achieving Best Evidence guidelines.

25. The social worker confirmed that she will be leaving this local authority and will not continue as the children's social worker. She further agreed that this was the only case in which children had made allegations of sexual abuse to her. She further confirmed that this is the only case involving sexual abuse allegations that she has been involved in and has gone to a "full trial". She stated that she has no formal training in respect of allegations of sexual abuse. However, she has asked her assistant team

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manager on a number of occasions how to approach and work with the children.

26. The social worker accepted that up until August 2017, the primary concerns for the children were around B's sexualised behaviour towards other children. She was also concerned that the parents did not have any explanation for B's behaviour.
27. She explained that the foster carers for L and H are first time foster carers. They have been wanting to be foster carers for some time and have had the appropriate training. In the social worker's opinion, the placement for the children with them has "gone well". The social worker was not unduly concerned about the foster carer saying "I love you" to the children and commented that the children seemed comfortable with this. She also told me that the foster carers have considered providing a home for both of the children in the long term.
28. The social worker explained in the course of her visit to the children on 22 August 2017 she had asked them direct questions such as if they had been "touched in their private parts". She believed this to be appropriate as they had already told the foster carers and had previously stated that B had "done it to him". She confirmed that at the time she was unaware that there had been a mention of a next door neighbour when the children were staying at their father's address. The social worker agreed that in August 2017, she believed that the children had been sexually abused, that there were more allegations to follow, and that they had been abused by a neighbour. The social worker further agreed that there had been an overall change to "the shape of the case" which had commenced with

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concerns around neglect to sexualised behaviour between the siblings, to sexual abuse by adults which had by 29 August 2017 included the parents.

29. The social worker readily accepted that there were incidents of the children describing events that were not true. This included being taken to a hospital where there was no record of such a hospital visit by ambulance. She also agreed that there was no medical evidence that was capable of supporting the allegations of the children. Furthermore, she agreed that no other adult had been identified by any professionals including the police who could be responsible for sexually abusing any of these three children.

30. She explained that the detail and the context of the allegations that H and L have made are of such a nature that it would not be within their age-appropriate knowledge and it was most likely that they had been truthful. She further explained that the details have been persisted with and that the children have been consistent with the allegations. She did not believe that the information that the children have provided had been impacted upon by the way they had been questioned. The social worker accepted that there may be a potential pattern in the way that the allegations are made by each of the younger children where they have made allegations if they feel they have been “in trouble” with their foster carers. However, she denied that the foster carers have emotionally or physically rewarded the children for making the allegations. She stated that phrases such as “well done for telling me” are capable of a number of interpretations. She also stated that the children were praised a good deal by the foster carers which were not in the context of raising allegations of sexual abuse. She

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denied that the making of the allegations was a way of “making up to the foster carers”.

31. The social worker told me that she had spoken to the mother about these allegations during the course of the investigations. She reminded me that in her opinion, the allegations were detailed and compelling. She considered all the possible ways that the children may have come to hold such knowledge including seeing explicit material. However, she reminded me that the parents were adamant in reassuring her that the children had no access to any such material whilst at home. She stated that the parents had put in place all the security measures such as password protection and parental control on all the devices. She was also confident that if such an incident had occurred at school, it would have been reported. She assured me that the local authority had taken a critical look at all of these allegations.
32. By a reference to a children’s book that refers to “Nab the crab at the seaside”, the social worker denied that any of the children had ever come across such a book and that there was any evidence to suggest this. In her opinion, the detail of the evidence that they have given is consistent with being abused. She readily accepted that it was very difficult to state the number of occasions, the timing in respect of each of these allegations.
33. She was taken to task about her use of the word “disclosure” and confirmed that she was unaware that the use of this term was ill-advised. She continued to express her concern about B’s sexualised behaviour. She was concerned that the parents were unmoved by these concerns and that she was unable to identify where such a behaviour may have stemmed

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from. She fully accepted that B has never made any allegations of a sexual nature against his mother, father or any characters that may be known as Nab, Ed, Ted or Dan. However, she expressed no surprise about this as she said that “sometimes children will not talk about it until later”.

34. The social worker explained that in her opinion the father was struggling to meet the children’s competing needs. There were concerns about the extent of physical abuse that the children have suffered. She accepted that the graphic nature of the allegations has made her to believe those allegations as true. She accepted that some of the allegations may have been graphic but not credible. This would include the extent of believing that the children may have suffered as a result of an assault.
35. She was pressed further about her attendance at the foster carer’s home and confirmed that there were two reasons for her visit in August 2017. The first was to see if there was any more information that the children were able to offer. The second reason was to undertake the work with the children when she left the “Care-ageous Kids” book for the children to work through. The social worker did not express any concerns about the two pre-interviews that were undertaken of H and L. She confirmed that when she went to see B on 4 September 2017, it was with a view to discuss the allegations raised by L and H.
36. The second witness I heard from was the children’s head teacher, AW. AW was taken through a number of documents that included her statement, her contributions to meetings, emails and forms from the school. She confirmed the accuracy of all of those documents.

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She told me that B was no longer at the school and was educated “off site”. She believed that she had every reason to exclude him from the school but felt that that would not meet his best interests. He is educated off site because of a number of serious incidents of assault on members of staff. AW expressed her profound concerns about B’s sexualised behaviour, its frequency, his determination in this regard and the severity of it. She explained that whilst at school, B had to be supervised continuously by a member of staff so as to ensure that he did not behave sexually towards any other child. She reminded me of one incident where a teaching assistant had not checked the toilets thoroughly enough before B was able to use them. Upon recognising that another child was in a cubicle a distance away, B had attempted to get to that child by crawling under the cubicles. This was done knowing that a teaching assistant was present in the vicinity.

37. AW told me about an incident between one of the younger children at school involving another girl. However, she explained this was innocent and it may have been misinterpreted by others at school. She also told me that neither of the younger children presented any longer with issues of soiling at school. AW also explained the school policies about the use of mobile telephones by the children. She explained that in recognition of parents’ desire for older children to have mobile telephones when walking to and from school, her school has allowed mobile telephones to be brought to and from school although these will be given to the teacher at the beginning of the day and collected at the end of the day. AW could not exclude the possibility that a mobile device may have been brought into the school without the school staff’s knowledge and the possibility that the children may have access to

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pornographic material on that device without the knowledge of the adults. However, she did explain that this would be unlikely in her opinion as she is not aware of any such incidents being reported at the school or in connection with the school. She also explained that she was not aware of the publications that the parents have referred to that include such titles as Nab the Crab or Dan Can. She confirmed that they hold book fairs at the school and there are books that the children may bring to school with them. However, she was unaware that such titles had been present on the school premises or had been accessed by the children. She also reminded me that the father's "attitude" about the issues of sexualised behaviour was that he did not know anything about it and that he was very clear that appropriate safeguards and parental controls had been activated on all of the devices that the children may have access at home.

38. I next heard from the children's foster father. I will identify him as FF. He told me that he and his wife had become approved foster carers in February 2017. They have no biological children and they had tried to become foster carers some years ago but had been unsuccessful. He confirmed that he has spent many hours undertaking training to become a foster carer and has continued to do so as a foster carer. He is the children's main carer and his wife goes to work. FF confirmed that he is the author of the notes that appear in the foster carer's logs. He explained that he does not make any notes whilst spending time with the children but that every evening he compiles his notes on the computer from memory. He assured me that the contents of his notes are 99-100% accurate. Where there are phrases that appear in quotation marks, these are verbatim accounts of what was said. When challenged on this issue, he continued to maintain that his notes were accurate but conceded that

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there may be parts of conversations or the lead up to conversations that may not necessarily be recorded in those notes. He confirmed that some of the entries include allegations by the children that were made to his wife, the foster mother (“FM”). FF told me that his wife would make notes on “scraps of paper” and they would both enter that information onto the computer system in the evening when FF would type in the notes and the FM would ensure that they were accurate.

39. FF was very clear in his evidence that the first allegation was of a sexual nature and it was not open to any other interpretation. He also confirmed that the incident of 13 August where H is reported to have shown fear of being hit was accurate and that H appeared to him to be scared and cowering away. He also confirmed the accuracy of the incident that he had recorded of a similar nature on 9 September 2017. FF stated that the social worker had left a book of *The Two Alligators* which considered the theme of “good touching” and “bad touching”. He said that the book was left on the coffee table and it could be accessed by the children as and when they required it. On many occasions, the children individually or collectively had asked him or FM to go through the book with them.
40. FF confirmed that he was aware not to ask children “leading questions” and on many occasions, including 6 September 2017 when allegations were raised, he had given the child or children “the floor” and not interrupted them. He confirmed that he had a clear impression that on 6 September, L’s demonstration was one of masturbation. FF demonstrated this from the witness box and told me that there could be no other interpretation of this action. He further told me that in the main he tried his utmost to make sure that when children made allegations, they did not do so in the presence of each other. However, this was sometimes

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unavoidable as there was no way of knowing when these allegations may be made. He confirmed that they had purchased a great deal of toys, beds and beddings in preparation of the boys' arrival to their care. He was careful to emphasise that this was not meant for them alone and this was intended to be supplies that they would use for other foster children, as and when other children were placed with them. He was taken to task about a family trip to a toy store following the children being medically examined. He denied that this was intended to be any form of reward but accepted that the children may have interpreted it as such. He also accepted that this may have been an overwhelming experience for the children given the background and what they had experienced earlier that day.

41. FF confirmed that he and his wife were given some information about the children prior to their arrival. He was aware that the two children had suffered and experienced neglect in the care of their parents. He confirmed that after their arrival on 2 June 2017, both boys were upset and presented as missing their parents. This continued for two weeks. FF was also taken to task about the "encouragement" for the boys to refer to him as "Daddy" and his wife as "Mummy". He denied that he had encouraged the children in any way to do this. He said that after a period of time in their care, the children spontaneously began to call them mummy and daddy. He conceded that their social worker had told him that this was inappropriate and they should not continue with it. He also accepted and confirmed that the overuse of the term "I love you" between the foster parents and the children may have been interpreted as inappropriate. He told me that he and his wife were both advised to use other phrases such as "we care about you". The foster father was very

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clear that certainly within a relatively short period of time, they had ceased responding back to the children by stating “I love you” or encouraging them in any way to call them mummy and daddy. When put to him, he accepted that there is a serious risk of misinterpretation of what the children may be saying and that always remained a possibility. When asked about the children’s publications “Nab Goes to the Beach” and “Dan Can”, FF denied awareness of these publications and that he was not aware that the children had access to these publications whilst being in their care.

42. FF confirmed that he and his wife were invited to the initial strategy meeting following the allegations being made by the children and that he felt this was entirely appropriate as they both needed to be appraised of all of the necessary information. He reluctantly agreed that the children may have used “soiling” as a means by which to control the foster parents. He was unaware that there was an immediate pattern that the children would make allegations after being “naughty”. When pressed further on this issue, he conceded that a pattern may be seen. Finally, he accepted that not all of the allegations that were raised by the children or their behaviour, is sexual or inappropriate. FF confirmed that the children had been able to gain access to his tablet. He confirmed that the children had been quite industrious to discover the password to his tablet. He told me that one evening, he came down and found the children to be using his tablet having gained full access to it. Since then, he has ensured that the children cannot access his tablet.

43. FF was challenged about the “good and bad choices”. This appears to have first surfaced in a note dated 13 June 2017, some 11 days after the

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children moved to foster care. FF explained that this was designed to promote positive behaviour in the children. He had taken advice from a social worker, Ms Bussen. He also confirmed that when he and the children saw their father by accident, the children were delighted to see him. However, he was unable to say what the father had whispered in the children's ear. Although he could not say why, H's behaviour and mood deteriorated. He also confirmed that he believed the children's allegations and continued by stating that the nature and the detail that the children have given in these allegations is beyond anything that children of their age should know or have experienced.

44. Ms Bussen was the next witness to give evidence. She confirmed the contents of her statement and a number of entries within the bundles to be true and accurate. She told me that the information about the three children initially came in one document which was drafted by the local authority that informed her and subsequently the foster carers. As the social worker for the foster carers, her responsibility was to the foster carers and in discussions, the local authority had decided to split the three children into two groups where B was separated from his two siblings, H and L. She also confirmed that the foster carers were "first-time foster carers" and that she had some concern about their ability to cope with three children, particularly given B's challenging behaviour. She had little doubt that this was the correct placement for L and H and, notwithstanding the allegations, they had thrived in the care of the foster parents.

45. She denied remembering any issues around the foster parents being referred to as "Mummy and Daddy" by H and L. Although she did state

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that “at some point” she may have had a discussion about this with the foster carers. She also confirmed that she reads the majority of the foster carers’ logs although these may not be read close to the time that they were typed. She also “believed” that there may have been a telephone call between her and FF about the allegations on 19 August as mentioned in the relevant email. She too was concerned that the foster carers made accurate notes and she was careful to explain to them that they must do this and not to question the children. In respect of the parents’ contact, she commented that the decision was for the children’s social worker to stop contact and that she was in support of that. She was careful to point out that she always encourages contact regardless of how difficult it might be but the children, particularly H, had changed his mind about going to contact on a number of occasions. She was concerned that the children did not feel that they were not “listened to”. She confirmed also that she had an input into discussions around shared activities between L, H and B. She was concerned not to give mixed messages or expose L and H to B too much. To this end, she had advised that perhaps they should not share sporting activities during the week.

46. Ms Bussen agreed that there may be a noticeable pattern of children behaving badly which is then followed by the making of an allegation to particularly FF. However, she qualified this by stating that this was true more in the latter stages of “the disclosures” than at the beginning where the scenarios in which these allegations were raised were much more varied. She was challenged about the use of the term “disclosure” by her agency. She denied having negative views about the parents and sought to assure me that she had kept an open mind and professional view throughout her involvement with this case. Having been taken through the

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documents at some length, she accepted that the issue of exchanges of the phrase “I love you” between the children and foster carers had continued for some time but denied that this was a significant issue. Ms Bussen told me that she had very limited experience of cases involving sexual abuse.

47. I next heard from Ms Gilbert who is also an employee of Fusion Fostering who have appointed her as a social worker to H and L’s foster carers. She has made one statement in these proceedings that she has confirmed as being true. Her first visit to the placement was on 21 September 2017 which post-dated the first allegations by the children. She tried to keep up with the foster carers’ logs by reading them and had a good grasp of what the case was about. This was her second job and she was helping Ms Bussen who remained the allocated social worker. She recalled having a conversation with FF about the children referring to him and his wife as “mummy and daddy”. She sought to discourage this. By reference to the strategy meeting on 20 October 2017, she confirmed that FF was disappointed that the police were taking no further action in respect of these allegations. She explained that FF felt that the “boys had been let down”. She also expressed some surprise about the FM’s emotional reaction.

48. Ms Gilbert stated that FF felt that he needed to protect the children and that he was aware that he needed to support contact between the children and their parents by reassuring the children. She raised some concern about a card from the mother which she felt was “emotionally charged”. She felt that this may have instilled a feeling of guilt in the children. She recalls having a very “brief conversation” with the foster carers about the possibility of them becoming long term foster carers for these children.

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She explained that this was no more than an enquiry. In respect of issues of contact, she was under the impression that both boys had asked for contact to stop and given the nature of allegations, this was an appropriate decision by the local authority.

49. The next witness to give evidence was the children's foster mother FM. She told me that she works full time and that her husband is the primary carer for both the children. She largely confirmed most of the evidence that her husband had given in respect of when the children came into their care and events leading up to it. She described the children on arrival as looking underdeveloped, underweight and in clothes that were two years too young for them. They lacked boundaries and would go up to any stranger for a hug or to say hello. It was difficult for them to concentrate on anything for more than five minutes. Their eating habits left much to be desired; they appeared to want take-away food and barely recognised any vegetables that were placed before them. She commented this has all changed; the children have come on in leaps and bounds and are appropriately dressed, developing well and their eating habits are much improved. She also confirmed that the children are now far more wary of strangers.
50. FM explained that she has had one allegation directly made to her by the children and that all other allegations have involved her husband. She denied making notes on "scraps of paper" and said that she would sit at the end of the evening with her husband and dictate her notes to him as he types it into the computer. If they disagreed about the contents, then it would be left out and not written into the records.

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51. She stated that the children seemed to want to have “a normal life” and that they referred to the foster parents by their first names. She accepted that the children soon started referring to them as mummy and daddy. She told me that after the first allegations, she remained very concerned about the children. She told me that in her interactions with the children when the allegations are made, she “just listens”. She reassured the children by saying that it is not their fault and that they are brave. She denied that this encouraged the children to make allegations.
52. She told me that the episodes of soiling began again and increased when contact was reintroduced in December 2017. FM further stated that neither of the boys ever spoke positively about their parents. She gave a vivid description and demonstration of L “cowering” when he thought that FF may hit him. She confirmed that H is doing very well at school and there are no episodes of soiling.
53. I next heard from JB, the assistant team manager for the children’s social worker. Having confirmed the contents of his one statement as being true, he went on to explain that he has supervised the children’s social worker since June 2017. He told me that he has the responsibility for a number of social workers who in turn manage a number of children that run into hundreds. He explained to me that the children’s allegations must be taken very seriously and looked at properly. He accepted that the term “disclosure” is not necessarily suitable but that amongst the professionals it is commonly used interchangeably with the term “allegation”. He also accepted that there may be a number of reasons why children may make

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allegations of sexual abuse in circumstances where they have not been sexually abused.

54. BP told me that he has received training in ABE guidelines, as far as he was aware the children's social worker had not received such training. He, having looked at all of the factors in the case, had come to the conclusion that the children's allegations of sexual abuse were true. However, he conceded that no other adults as described by the children have been identified either by the local authority or the police. He further accepted that Nab and Dan may be characters from a children's reading book although no-one has been able to confirm whether these children have had access to those books. Furthermore, when questioned about the "good gators and bad gators" he accepted that the bad character who undertakes the "bad touching" is a crab and that this happens on a beach. B denied noticing any pattern in the children's behaviour prior or leading to making allegations. When challenged about the inclusion of the foster carers in the strategy discussions, he stated that foster carers can be included in the professional "network".

55. The children's mother was the next witness to give evidence who was assisted by her intermediary in this task. She confirmed her statement, the replies to the local authority's threshold that have been filed on her behalf and the contents of her police interview as being true. She immediately agreed that at time she "smacked the children" when they were "naughty" and that sometimes they would cry. She believed that she should not have done that. She told me that she had struggled to manage the children by implementing the techniques that she had learned in parenting classes. She also told me that sometimes she shouted at the children. The mother

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also confirmed that the children's father would often shout at them and when she told him to stop, he would usually ignore her which caused her to be annoyed with him. She also saw the father "smack the boys" and often the boys would put their "hands up and cower".

56. The mother denied being aware of anybody by the names of Dan, Nab, or Ed. She also denied having any knowledge of any of the children being sexually abused. She told me that she did not speak to B about his alleged behaviour at school and that she was embarrassed by this. She accepted that the children's allegations and knowledge was not age-appropriate. She told me in respect of L's knowledge about sperm, he was too young to know such matters. When challenged about the issues of sexual abuse, she was unable to explain why and denied having any knowledge of any incidents that the children may have been exposed to in this regard. She was very clear and adamant that she has not sexually abused any of the children and that she had not witnessed anyone do the same. When pressed on the issue, she conceded that "something" must have happened to the children and that this happened whilst they were in the care of their father.

57. The mother explained to me that she had difficulty in coping with the children's behaviour, particularly that of B. She accepted that her house was messy, cluttered and, at times, dirty. Given those circumstances, the local authority's recommendation was adopted in late 2013/early 2014, when the children went to live with their father. She also told me that the children were challenging for the father. He too struggled to look after them. The mother further confirmed the arrangements for the children by stating that they began living with the father in 2014 and she had

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supervised contact with them until around 2015. At that time, she was seeing the children every Monday, Tuesday, Wednesday and every other weekend. During the weekdays, she would collect the children from school and take them back to the father's property where she would feed and bathe them before putting them to bed. During her alternate weekend contact, she would stay at the father's address on Saturday evenings. In the course of the week, she would not normally stay although there were occasions when she had stayed at the father's address. In the first address, the children shared a bedroom where B had his own bed and L and H shared a bunk bed. In the second address, B had his own room.

58. The mother explained that B's behaviour was one of the main causes of difficulty and that his behaviour was particularly bad towards her. When asked if B was scared of his father, she said that she had hoped not but on reflection she thought that he could have been. She said that the children were quite active and that they would play fight and at times this may have got rough. She denied seeing any untoward behaviour by any of the children other than saying that she saw B "smack" L and H's "bottoms". The mother was also challenged about the home environment, the children's behaviour and poor parenting that the children had received whilst in her care. The mother accepted that some of the children's behaviour is explained by the poor parenting that they have experienced at the hands of the mother and the father. When pressed further on the issue of soiling, the mother told me that she thought that there may have been a difficulty with all three children soiling themselves when they lived with her. However, when pressed further, she said that the first documented episode of soiling was after the children had moved to live with their father. She further accepted that she may have hit L with a

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spoon on one occasion. She denied ever seeing the father attacking any of the children with a fork. She also accepted that she had washed B's mouth out with soap and water.

59. The mother was questioned further about her statement where she had mentioned the children touching their penises whilst watching television. She explained that the children would sometimes put their hand down their trousers and "fiddle their willies". She did not interpret this as sexualised behaviour and told the children to stop doing that. She may have also observed the children doing the same in the bath but denied ever seeing the children touching each other's genitals at any point. She also denied ever touching any of the children in a sexual manner. She explained that she had touched L's and H's penises only to help them wash. In respect of her relationship with the father, she was unable to explain why the couple had separated. She denied having any relationship other than a friendship with him since their separation. She said that they had had one sexual encounter after the children had been removed which had led to a pregnancy. She explained that they were both feeling very low and they were comforting each other. She was careful to emphasise that there is no ongoing sexual relationship between her and the father and that this was a one-off incident.

60. The final witness to give oral evidence was the father of the children who confirmed his statements, responses to threshold document that had been filed on his behalf and the contents of his police interview as being accurate. The father described the children as "cheeky and hyperactive". He told me that the children can also be sensitive and when he is upset they would give him "kisses and cuddles". He told me that the children

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were very boisterous but very caring towards each other. The father denied that the children were not fed well and told me that they had Christmas turkey, lots of vegetables, hams and an appropriate, varied diet. Takeaways were limited to pay day as a treat. He told me that they had many day trips and also trips as a family. That included trips to Cornwall and Somerset. They visited the beach quite often. The father then went on to describe his strong work ethic to me. On reflection, he told me that he was ill-prepared for when the children came to live with him in September 2013 which became permanent through court orders in January 2014. He told me that he, having worked full time until that point, found it difficult to adjust to not working and looking after three children. He accepted smacking the children and, in hindsight, perhaps he could have done things differently. He also accepted shouting at the children. He told me about his passion for basketball and that when attending matches, he has a tendency to shout a great deal when supporting of his team. Thus he explained that it may be that due to his loud voice he may have been perceived as louder than he intended to be. He denied ever punching the children or sexually abusing them. He had not witnessed any sexualised behaviour on the part of any of the children. He told me that on occasion he may have seen them scratching their private parts, either through clothing or over clothing. He was aware of B's behaviour at school and he took it very seriously. He spoke to him on one occasion and he said that if he continues behaving like this, he would end up in "jail". The father also told me that he had a colleague who was known as Dan, although he never visited the property. He did not know anybody called Nab, Ed or Ted.

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61. The father then gave some detail about the background and how the children had supervised contact with their mother until December 2015. He agreed with the mother's version that she would have unsupervised contact with them three evenings during the week and on alternate weekends. In the main, he provided the children with breakfast and the mother looked after them during the times that she was there. He denied that the children had limited access to food and explained that the purpose of fitting a lock on the kitchen door was to stop the children from accessing the food as and when they wanted. He denied that there was anything wrong with this approach. He was then challenged around the issues of neglect and accepted that the children were neglected whilst they were in the care of their mother. He was less accepting of the children being neglected in his care and was challenged about the extensive period in the course of which one of the children had been left without his prescription glasses. He admitted that he would shout and swear in front of the children and would do so in frustration. He also accepted that this may have been in an aggressive manner in front of the children. At times, he may have been close up to the children's faces doing this which caused them to cry. He also accepted that the evidence would show that at times he handled the children "roughly". When asked about the allegation by B that he was pushed into the bathroom where he fell over and hit his head against the toilet, the father denied this. He reflected that there may have been an incident where he was taken to the bathroom but denied pushing him. When asked why the children might cower or that B might flinch, he explained that maybe this was because of the mother smacking the children. He denied having any knowledge of being confronted by the mother about his treatment of the children. He accepted that the children's version of physical abuse was a compelling

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version but could not explain why this was, in his opinion, a lie, other than stating this had never happened. When pressed, the father accepted the medical opinion that it was unlikely that there is an organic cause for the soiling by the children and that this is more likely to be related to care that they have received from the parents. He denied being “fed up” with going to the school and dealing with the issue of soiling.

62. In respect of the sexualised behaviour, he proffered an explanation about B’s behaviour by having access to pornographic material. Whilst he assured me that any equipment within his home has suitable parental guidance and security, he reflected that the children may have accessed this information through other medium that included “a smart watch”. The latter was developed in the course of cross-examination of other witnesses and had not previously been mentioned by either parent. He accepted that B’s behaviour was extreme and that this is why he spoke to him. He also accepted that this was first noticed in 2014 and told me that he and the children’s mother spoke to him about his behaviour. When asked about B’s behaviour with the foster carers’ daughter, the father explained that she was familiar to the children, being one of his friends and that he had encouraged B to “slap her bottom” when she would visit their property. He explained that this was nothing more than a joke and that they would laugh at this behaviour. He did not feel that this constituted sexualised behaviour and denied that there was a lack of sexual boundaries within his home.

63. The father was then challenged about the sexual abuse allegations made by H and L. He did not seek to challenge the veracity or the accuracy of the notes that the foster carers had taken. When asked if he had any

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concerns about the context within which these allegations had been made, he replied by saying that he had not “really thought about it”. He continued by saying that he found it “strange that when L is naughty” he would then make an allegation. He denied that either L or H ever told him about B touching his siblings inappropriately. Equally, he denied that he had ever instructed the boys, whether individually or collectively, to keep any “secrets”.

64. The father was then challenged about the detail of the allegations that are contained within the foster carers’ notes. He agreed that the allegations were very sophisticated and that this level of sophistication was beyond the children’s chronological age. He could not explain why they would make up such “lies”. The father denied that the children would know anybody or come in contact with anybody by the names of Dan or Nab. He also denied ever coming across the books that were produced in the course of these proceedings bearing those names. He agreed that the children in their allegations make a distinction between cleaning and sexual behaviour. He further agreed that the children have been very specific in their allegations and this too would be a very sophisticated lie. Whilst he accepted that the nature and the content of these allegations are compelling, he denied that they are true and that those incidents had ever happened.

65. The father was then further challenged about the detail and the context of some of the allegations. In this regard, he was taken to the description given by L of “sticky wee”. The father readily accepted that L was referring to male ejaculate but could not explain where he would get this knowledge from or why he would make such an allegation. He described

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the further description of it looking “like milk but thick” as “worrying”. The father accepted that in the course of that allegation, L was describing an episode of masturbation by an adult. When asked to explain what L meant by the man “growling”, he said that he did not know and that he found it a very “odd description”. He was challenged further about this and eventually accepted that this was a description of a man making a sound at the point of ejaculation. Once again, he accepted that this would be “a very, very sophisticated lie”.

Other evidence

66. There are a number of important factors that can be observed in the written evidence. Some of this was put to the witness in the course of questioning. The genesis and the context of the allegations as they arise are in my judgment important factors to be taken into account. FF’s detailed notes reveal that the first of the sexual abuse allegations was made on 19 August 2017. It is noted that earlier in the day L wanted to upset FF, there was a missed eye appointment and that L had soiled himself in the car. Immediately prior to the allegations, L had urinated on his pyjamas, was upset and had an erection. L is said to have regularly changed the subject and moved between scenarios. The second allegation arose in the course of the social worker’s visit as confirmed by her in her evidence. When completing the “Gator” booklet, no allegations were made. L’s first allegation to the social worker came after the social worker went back to the page concerning the touching of “private parts”. He was then confronted with direct questioning by the social worker about what he had said to FF. When H was asked directly about the allegations, he denied that this had happened to him. Later the same day,

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despite being told not to ask a direct question of the children, FF questioned L. This is apparent from his notes and confirmed in his oral evidence. Both H and L stated that they had been touched by B. This was once again during a time when the children were looking at the “Gator” booklet that was left behind by the social worker.

67. FF’s notes further reveal that the allegations made on 5, 6 and 9 September 2017 together with 10 October 2017 are in the context of L apologising to FF after L had been upset with or ignored FF. On some occasions both children have been present and indeed debated the allegations between them. Notably on 29 August 2017 and 19 September 2017. The allegations that were made on 25 August and 28 August 2017 where in the context of an earlier disagreement and upset between L and FF after L had struck, or attempted to strike, H. The said notes further reveal that “Nab” and “Dan” are first mentioned by L on 25 August 2017, some three days after he was given the “Gator” booklet. I have seen and studied this booklet. The booklet has been used a great deal by the children and has many of their markings on it. The main characters in the book are two “Gators”, “Gator Goodfellow” and “Gator Goodheart”. The other characters include a crab and a lobster that are depicted as undertaking “bad touching”. The discussions about private parts in this booklet are accompanied by a scene at the beach. Furthermore, there is reference to bathing and permissible or “good” touching. The story is told through a series of written phrases and illustrations. It is clear that the booklet was made available to the children at all times and on a number of occasions they asked the foster parents to work through it with. At times the children undertook this task in the presence of each other. I have also considered the copies of the two publications “Dan Can” and

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“Nab the crab”. On the former, I found nothing in its contents that would be relevant other than the name. As to the latter, there is clear reference to the unusual name of “Nab” who is a crab and lives on the beach.

68. The unchallenged medical evidence in respect of the issue of soiling does not identify any organic or physical causes. In the opinion of Dr Connell, the children have demonstrated periods of normal bowel control and that the underlying cause is likely to be their emotional state and their circumstances at that time. This opinion is corroborated by the parents’ own account, the periods of improvement in foster care and the deterioration upon the reintroduction of contact after ceasing contact for nearly three months. The children have been medically examined. H and L were examined on 29 September 2017 and B on 10 November 2017. There are no medical findings that are capable of corroborating the allegations of sexual abuse. However the lack of such evidence does not negate or exclude the possibility of some or all of the children having been sexually abused.
69. I further note that investigating officer (“G”) was not able to attend court and to give evidence. As such the parties have been unable to ask her appropriate questions or otherwise to challenge her evidence. However it is clear from her notes that she too has been involved in the questioning of H and L. These have at times been direct and leading questions that commenced as early as August 2017. Furthermore she undertook the Video Recorded Interview of the children where it is clear that both children struggled a great deal to concentrate and to answer the questions that were put to them. There is very little in the contents of these

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interviews that would add any weight to the evidence in support of the schedule of findings.

Analysis and conclusion

70. The sexual abuse allegations by H and L are detailed, extremely graphic and are years beyond the age-appropriate knowledge of these children. There are several possibilities as to how they come to hold such knowledge. These include being sexually abused as alleged, sexually abused by others who are not mentioned in the allegations, exposure to inappropriate sexual material that may include discussions with others (children or adults) or a combination of the above. Whilst the question of misinterpretation by adults of what the children have stated cannot be ignored, given the detailed graphic nature of these allegations, the issue of misinterpretation is not a significant factor. The explicit nature of these allegations is such that at first blush, it is hard to imagine how these allegations cannot be true. Indeed this has been a strongly held view by most of the professionals who have been charged with looking after these children's welfare, including their foster parents.

71. These allegations have a common, enduring and consistent theme. At several points they give clear descriptions of adult penises and differentiate them from their penises. Additionally they differentiate this from the female genitals by reference to their mother's genitals. They clearly describe male ejaculate, its colour, its consistency and texture. Again, this is differentiated with the children's "wee" and is described in

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an entirely age appropriate manner. The children's account of what happened to the adult penises after ejaculation and the expression of gratification that accompanied this are highly descriptive details of what are horrific alleged acts perpetrated on children. The account of being shown how to masturbate as describe by FF was a highly credible account. There are also contextual details that add to the credibility of these accounts. They include what the mother was wearing, that it happened in the "TV room" and L describing the feel of "Dan's" stubble by likening it to FF's stubble in an age appropriate way. In the main, the allegations are accompanied with some appropriate emotional affect that include being upset and crying. At times the children also describe being upset, hurt or in pain by what is alleged to have been perpetrated upon them. Whilst these factors are not determinative of the findings, they are in my judgment significant persuasive factors that I have taken into account.

72. The children's accounts are mainly found in FF's notes which are very detailed. They are direct accounts to the foster parents about which they have given evidence. Depending on when the allegations were made, some were recorded close to the time that they were made and others much later in the evening. As accepted by FF, his notes are not a verbatim note of the conversations. Some may have taken place over a number of minutes or hours and yet the conversations between the recorded notes are absent. This is best illustrated by the account of the first allegations which are recorded as commencing at 08.40 pm and ending on 09.55 pm. This account is contained in a page of typed notes. The conversations that occupied one hour and fifteen minutes would populate many pages of notes if taken verbatim. The entire notes for the day were written at 11.30

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pm. Generally, most of the notes cover a period that begin in early morning at around 07.00 am and conclude in the evening. They are written up at different time in the evening. Some as early as around 07.30 pm and others closer to midnight.

73. Neither FF nor FM are trained to appropriately undertake interviews of children. I do not criticise the foster parents. For good reason, foster parents are not required to undertake such tasks. I have no doubt that FF has recorded the events as accurately and faithfully as he can. I have less confidence in the accuracy of these notes than that asserted by FF. Whilst FF may be entirely genuine in his assertion that his notes are 99 to 100% accurate, I must make allowances for the possible fallibility of human memory that is impacted upon by many factors including the subject matter, interpretation of what it is alleged, influence of others through discussions or gestures and the passage of time. The notes of 31 August 2017 clearly illustrate the detailed conversation that H and L had about the allegations. It is difficult to assess the pace of this conversation. It would be a monumental task for FF to recall the precise words that each of the children spoke when he made his notes later that evening.
74. There are details that are left out from the notes. These details are very important in establishing the context in which the allegations are made. For example, unless it is recorded, it is impossible to know if the allegations are made in response to direct or leading questions or if the children gave a free flowing account. It is impossible to establish the contributions that have been made to these allegations by discussions with others who were present, their gestures or their reactions. The narrative description of the children when making the allegations is

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subject to the memory and interpretation of the person giving such description. I note that prior to the allegations coming to light, the foster carers told L that his “willy bits” are called “private parts”.

75. These considerations become even more important in circumstances where the allegations are made and elaborated over many weeks in circumstances where both children live in the same home. FF’s notes reveal clear examples where the children have made some of allegations in the presence of the other in the course of which they agree on some issues and disagree or correct each other on the details. In my judgment, it is highly likely that, away from the adults, H and L have discussed these between themselves. The passage of time is also important in relation to the atmosphere in which the children lived whilst in foster care. Given the horrific nature of these allegations, the children have been treated as victims from the time that the first allegation was made. I note that the foster parents have been included in the strategy discussions that may have impacted upon their collective or individual views. It is impossible to reliably assess what if any impact this may have had on the children continuing to raise allegations. It is suggested on behalf of the parents that this created a setting in which the children felt encouraged or rewarded for making allegations or otherwise a reliable tactic to deflect attention when they felt that they were in trouble.

76. Whilst I found the social worker to be a reliable witness, I was very concerned about her approach to questioning the children. Despite having almost no experience in cases involving allegations of sexual abuse, no training in the ABE guidelines or otherwise the appropriate means of questioning children, she undertook direct questioning of H and L. This

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was three days after the first allegation was made. It would be impossible to know how far this may have impacted on the allegations that were made subsequently. Furthermore the questioning of the children continued by others later that day and after this date. The ABE guidelines make it clear that the number of times that a child is questioned is directly relevant to the reliability of the account that the child gives.

77. Denials or retractions by the children are also important factors that must be weighed into the balance of the “wide canvass”. In this context the children’s school has noted H as stating that he had “lied” about his parents. Although he has made allegations of physical chastisement against his parents, B has never alleged any sexual abuse.

78. H and L have given accounts that are highly improbable or are not true. These include a description of other events such as L being stabbed in his “stomach” by a fork, bleeding a great deal and being taken to the hospital (9 September 2017). Other examples include the mother breaking H’s glasses and his eyes bleeding (2 January 2018). These have not been corroborated by any other evidence, including physical evidence of an injury or a record of ambulance taking any of the children to the hospital.

79. Save for identifying the father’s house and the beach, there is very little detail within the allegations about when, and the period of time during which, these events occurred. Apart from the parents, the police investigations have not identified any of the other individuals who are said to be involved in the alleged sexual abuse. Furthermore I note that

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the said individuals have at different times been described as children, adults and at times living with the subject children at their home.

80. At the time that the allegations first came to light, L and H were seven and six years old respectively. By the parents' admission, they had lived an unsettled and neglectful life before going into foster care on 2 June 2017. Prior to their Video Recoded Interviews, H and L were assessed by an intermediary who found that H presented with poor attention and ability to focus. H suffered with limitation in his responses and communications. L also suffered with poor attention and ability to focus. His language was difficult to assess. She further stated that L had significant difficulties in his communications across all areas. L's poor attention was the "main barrier" with significantly delayed expressive language skills. In respect of L she concluded that *"he was unable to give a coherent narrative despite visual support and simple and direct questioning"*. Having carefully watched the Video Recorded Interview of H and L, I found the unchallenged evidence of the intermediary to be entirely born out.

81. Save for the parents, none of the "adults" mentioned in the children's allegations have been identified. The development of the allegations appear to coincide with the work undertaken by reference to the "Gator" book. The names "Dan" and "Nab" also coincide with the names of characters in children's reading books. There is no evidence that would support a direct connection between the two and that any of these children have ever had access to the latter two publications. As AW fairly stated, the school holds a book fair and the children also bring their own books into school. She was unaware of such publications

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being on the school premises but could not say that they had not been at some point. In my judgment to go beyond this would be speculative and not supported by evidence. Even if the children did have access to such publications, there may be a number reasons why the children would have identified the alleged perpetrators of abuse by those names.

82. AW also accepted the possibility of the children accessing explicit material through their smart telephones or other machines that they bring to the school. Whilst she was clear that there was a strict policy about access to such devices at the school and that there were no reported such incidents, she could not dismiss this possibility. In her evidence which I found entirely reliable, she was also very clear about the difficulties in B's behaviour, the risk he poses to other children and the parents' responses when informed about this. The evidence in respect of B's behaviour is clear and unchallenged. However the evidence about the cause of his behaviour is far from clear.

83. The challenges of caring for a child with B's behaviour cannot be overstated. His behaviour has continued at school and whilst in foster care he has turned his attention to the adult in that house hold. I appreciate that the mother was embarrassed by B's behaviour, but I find it extraordinary that neither parent thought that his behaviour merited any supervision or intervention at home. The father had one conversation with him and the mother did nothing. I was deeply concerned and profoundly unimpressed by the father's attempt to excuse B's behaviour towards the foster mother and her daughter as a "joke". More so when he explained that this stemmed from a time that he encouraged this "joke" whilst B was in his care. This directly chimed with AW's evidence that the

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parents seemed unconcerned about B's behaviour. I note that B features as the perpetrator of sexual acts upon H and L in the very first allegations that were raised on 19 and 22 August 2017.

84. Overall, I found the mother to be a more credible witness than the father. In relation to the allegations of neglect, physical chastisement and shouting, I found her to try her very best to give an honest account. Furthermore I found her to be entirely genuine when she told me that she did not know why the parents separated or that they found comfort in each other when the children were removed from their care. Similarly, I found her to be genuine on the issue of confronting the father about shouting or hitting the children and his reaction to this. I was concerned that at times during her evidence she sought to step back from or minimise her concessions on the issues of neglect, physical and emotional abuse. The mother was worryingly unmoved about the impact of the children's access to food being limited. Her denial of sexual abuse of the children or being involved in the same was emphatic. Her description of the children putting the hands down their trousers appeared to be what may be interpreted as age appropriate behaviour.

85. The father gave an account of a warm happy family life where, despite the parents' separation, they worked well together in looking after the children. The family was relatively isolated with no visitors and the children spending the majority of their time within the family unit. He was candid in his reflection that he was not ready to receive the three children into his care in 2013. He made a number of concessions about his treatment of the children. However when pressed beyond the broad

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concessions, he sought to minimise his behaviour or its impact on the children. His explanation of his shouting being related to his love of Basketball, was in my judgment, born out of desperation and lacked any credibility. Equally his evidence about shouting in the children's face was unpersuasive and lacked empathy for his children. Sadly I found this to be a consistent theme in his evidence and came to the fore when asked about physically chastising the children or putting a lock on the kitchen door as a means of "controlling" the children. I also found his attitude towards the mother to be callous and uncaring. The father was consistently strong in his denial of the sexual abuse allegations. Until he gave his oral evidence, he had been adamant that all devices in his home were protected with appropriate parental control. In his oral evidence he explained that there were other devices such as the Sky box that was not protected by any parental control. I found this surprising as he and the mother have both had many months to consider these issues during which time they have each had the benefit of independent legal advice and representation.

86. Both parents were reluctant to accept that there were no underlying physical conditions that may have caused or contributed to the issue of soiling. However they sought appropriate medical advice about this issue. In cross examination, both parents accepted that the graphic detail and the knowledge of sexual acts that are within the allegations are beyond the children's age appropriate knowledge of such matters. In father's case he accepted that if the allegations are not true, they are "sophisticated lies" given the ages and ability of each of the children.

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87. I have no doubt that all three children have been exposed to emotionally and physically neglectful parenting which started as long ago as when the children were in the care of the mother and continued after the children were cared for by the father. Whilst I found the mother's evidence more reliable on these issues as compared with the father's, the evidence of both parents sought to minimise or illustrate the lack of insight by these parents in the impact that their parenting has had on these three children. It is clear to me that the children were subjected to serious shouting and physically assaulted by both parents, particularly the father. The children's cowering or flinching has been caused by their treatment at the hands of the father.
88. The severity and extent of B's sexualised behaviour is not in dispute and clear from the evidence. Neither parent has shown any appropriate concern about this behaviour. Neither parent has sought to address B's behaviour or to put in place boundaries that would protect the other children from exposure to this behaviour. Based on the father's evidence, it is clear to me that B's behaviour was at times encouraged and treated as a "joke" when directed towards adults. There is no evidence that would explain the source and cause of B's behaviour and any observations about this would be nothing more than speculation.
89. As to the allegations of sexual abuse by H and L, I have to conclude that the evidence in support of these allegations is not sufficiently reliable to support the findings. In the preceding paragraphs I have identified the issues that have led me to this conclusion after. I remind myself of the observations of Baker J (as he then was) in *A Local Authority v K and*

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Others [2009] EWHC 850 (Fam), where at paragraph 138 he stated as follows:

“... they adopt their client's professed position that there is no way that the children would have had the knowledge that they did express in the interviews unless they had experienced these matters first hand. This is, at first, a strong submission and, on viewing the ABE interviews alone, one might find it hard to imagine how the children could possibly have acquired the knowledge about these matters without direct experience. But I am satisfied that much of what the children have said is untrue, including allegations about matters that one might have thought would be outside the experience of children, even in these days where sexual matters are spoken of with greater freedom and licence - for example, the descriptions of group sex and the account of fists being inserted into bottoms. In those circumstances, it is, in my view, less hard to accept that everything the children said was or could have been as a result of things said to them by their mother. The court is aware of research by Professor Ceci and others that has demonstrated that children can come to believe and describe things that are untrue, even things that they say have happened to them directly. The aspects of their accounts that have given me greatest concern have been their comments of direct physical experiences, including a description of ejaculation, the taste of semen and descriptions of male masturbation. I have spent much time wondering whether children can really have given such details without direct experience. In the end, I have concluded that, given my findings that other allegations apparently based on experience were manifestly untrue, it is not impossible that even the vivid accounts of such physical experiences

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provided by A in her first interview, could have been instilled by coaching or leading questions.”

90. In this instance, the children’s accounts are mainly in FF’s notes as supplemented by those from the social worker. The ABE Guidelines have been developed over decades. They guide all professionals in this field to obtain the most reliable evidence whilst minimising the impact of this process on vulnerable witnesses. The reasons that I have set out above illustrates that direct questioning of children by professionals or foster parents without appropriate training can be catastrophic to the reliability of the evidence that is acquired through this process. The intermediary’s assessment and the video recorded interviews that followed illustrate the contrast in the information that is given by these two children in controlled conditions. It further illustrates the dangers and the pitfalls of this being undertaken by those who are not suitably trained. This can be a highly damaging experience for vulnerable children and may seriously jeopardise the possibility of establishing the truth of the allegations. In this context, establishing the disputed facts is an integral part of identifying and providing appropriate services to meet the children’s short, medium and long term needs.

91. I have carefully considered the other possible ways in which the children may have come to hold such detailed sexual knowledge. There is a real difficulty in coming to a settled view about this. Whilst the possibility of sexual abuse by others, exposure to sexual material, acts or discussions with others together with a combination thereof can all provide a possible explanation for the knowledge that these children hold, the evidence that

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would support such a finding is lacking. Therefore I cannot make any specific finding in respect of these remaining possibilities.

92. Having considered the totality of the evidence before me, the evidence in support of the sexual abuse allegations is not sufficiently reliable to justify the making of the findings. By contrast the evidence in support of the remaining allegations, which has been largely accepted by both parents, is overwhelming. Having carefully considered the local authority's draft schedule I make the following findings:

a. From 2009 to 2013

The children were significantly harmed through chronic neglect by their parents who have whether jointly or individually failed to provide them with:

- i. Consistent parenting, and
- ii. An appropriate hygienic home to live in, and
- iii. Appropriate boundaries, and failed to
- iv. Manage the children's behaviour, and
- v. Each parent has failed to adequately address or to protect the children from all of the above.

b. From September 2013 to June 2017

The children suffered significant emotional and physical harm at the hands of the parents whether jointly or severally, by;

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- i. Regularly shouting at the children. The father shouted loudly close to or in the children's faces causing them fear, upset and to cry, and
- ii. Regularly assaulting the children by hitting them, pushing them or otherwise handling them roughly to cause them fear, upset, and pain which at times caused them to cry, and
- iii. Failing to have any or sufficient regard to, deal with or otherwise address B's sexualised behaviour, and
- iv. Failing to implement any suitable boundaries or supervision that would eliminate or minimise H's and L's exposure to B's sexualised behaviour, and
- v. Failing to establish or to maintain reasonable sexual boundaries within the home, and
- vi. H and L have suffered with chronic soiling as a consequence of the abusive parenting they have experienced in the joint and several care of the parents, and
- vii. Each parent has minimised and has lacked insight into the impact on each of the children of the findings in the preceding paragraphs, and
- viii. Each parent has failed to adequately address or to protect the children from all of the above.

SCHEDULE ONE

Statement of the law

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Burden and standard of proof

1. The local authority seeks to prove the allegations that I have summarised earlier in my judgment. The local authority must prove those allegations on a balance of probabilities. The concepts of burden and standard of proof have been most helpfully set out in Re B (Care Proceedings : Standard of Proof) [2008] UKHL 35 the court observed that:

“The standard of proof in finding of facts necessary to establish the threshold under s 31(2) or the welfare considerations in s 1 was the simple balance of probabilities, neither more, nor less; neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. There was only one civil standard of proof, and that was proof that the fact in issue more probably occurred than not. There was no ‘heightened civil standard’ and no legal rule that ‘the more serious the allegation, the more cogent the evidence needed to prove it’; common sense, not law, required that, in deciding whether it was more likely than not that something had taken place, regard should be had, to whatever extent was appropriate, to inherent probabilities.”

2. Lord Justice Hoffman stated at paragraph 2:

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“If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”

He continued at paragraph 4:

“The question which appears to have given rise to some practical difficulty is the standard of proof in such cases, that is to say, the degree of persuasion which the tribunal must feel before it decides that the fact in issue did happen. Re H and Others (Minors) makes it clear that it must apply the ordinary civil standard of proof. It must be satisfied that the occurrence of the fact in question was more likely than not.”

3. His Lordship emphasised at paragraph 15:

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable

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than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

4. Additionally Baroness Hale stated:

“... day after day, up and down the country, on issues large and small, judges are making up their minds whom to believe. They are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other, and their overall impression of the characters and motivations of the witnesses. The task is a difficult one. It must be performed without prejudice and preconceived ideas. But it is the task which we are paid to perform to the best of our ability.

In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place.

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If he finds it more likely than not that it did not take place, then it is treated as not having taken place.

This issue shows quite clearly that there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place. The test is the balance of probabilities, nothing more and nothing less.

...

70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.”

5. Lord Nicholls of Birkenhead, in Re H and Others (Minors) (Sexual Abuse : Standard of Proof) [1996] AC 563, addressed matters concerning the ‘inherent probabilities’, which is set out at page 96 of his judgment. He stated that:

“The balance of probabilities standard means that court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the

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event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probabilities. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his underage stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the same seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established.”

6. In Re B (Care Proceedings : Standard of Proof) [2008] UKHL 35, Lord Hoffman made the following judicial comments at paragraph 15, with particular reference to the words ‘*to whatever extent is appropriate in the*

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particular case' as used by Lord Nicholls in Re H and Others (Minors) (Sexual Abuse : Standard of Proof) [1996] AC 563 :

“Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start ones reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.”

7. Baroness Hale’s invaluable observations in Re B (supra), continued at paragraphs 66 and 73:

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“In assessing the inherent probabilities or improbabilities, in general I believe the following are more probable, unless there is evidence which leads me to a different conclusion:

- (i) perpetration by one individual is more probable than perpetration by two individuals in different incidents at separate times. A household where two carers are capable of causing separate incidents of serious injury to an infant is more improbable than a household where one carer is capable of doing so. However, it is of course possible that a household can include two carers who are capable of hurting children;*
- (ii) it is more probable that an incident of injury by a single perpetrator occurs within a domestic environment rather than outside, in the open, where he or she runs the risk of being seen and apprehended by a member of the public; and*
- (iii) perpetration in the absence of a witness, rather than in the presence of a witness is more likely, unless of course the perpetrator can rely upon the silence and the collusion of the witness. That is because self-restraint or fear of ultimate detection would lead to such caution. Of course, if two adults hurt a child, each has a reason to keep quiet. A conclusion that it is more probable that A was the perpetrator rather than B is not a conclusion that A is the perpetrator rather than B for certain, but rather that I conclude that there is*

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more evidence in favour of A being the perpetrator rather than B.

It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Someone looking after the child at the relevant time must have done it. The inherent improbability of the event has no relevance to deciding who that was. The simple balance of probabilities test should apply.”

8. Munby LJ in Re A (A Child) (Fact-Finding Hearing : Speculation) [2011] EWCA Civ 12 at paragraph 26, Munby LJ described :

“... the elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation.”

9. He emphasised this further as the President of the Family Division in Re A (Application for Care and Placement Orders : Local Authority Failings) [2015] EWFC 11:

“9.The first is that the local authority, if its case is challenged on some factual point, must adduce proper evidence to establish what it seeks to prove. Much material to be found in local authority case records or social work

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chronologies is hearsay, often second- or third-hand hearsay. Hearsay evidence is, of course, admissible in family proceedings. But, and as the present case so vividly demonstrates, a local authority which is unwilling or unable to produce the witnesses who can speak of such matters first-hand, may find itself in great, or indeed insuperable, difficulties if a parent not merely puts the matter in issue but goes into the witness-box to deny it. As I remarked in my second View from the President's Chambers, [2013] Fam Law 680:

“Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no-one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority's files.”

It is a common feature of care cases that a local authority asserts that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority's

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concern about something. If the 'thing' is put in issue, the local authority must both prove the 'thing' and establish that it has the significance attributed to it by the local authority.

10. The second practical and procedural point goes to the formulation of threshold and proposed findings of fact. The schedule of findings in the present case contains, as we shall see, allegations in relation to the father that "he appears to have" lied or colluded, that various people have "stated" or "reported" things, and that "there is an allegation". With all respect to counsel, this form of allegation, which one sees far too often in such documents, is wrong and should never be used. It confuses the crucial distinction, once upon a time, though no longer, spelt out in the rules of pleading and well understood, between an assertion of fact and the evidence needed to prove the assertion. What do the words "he appears to have lied" or "X reports that he did Y" mean? More important, where does it take one? The relevant allegation is not that "he appears to have lied" or "X reports"; the relevant allegation, if there is evidence to support it, is surely that "he lied" or "he did Y".

11. Failure to understand these principles and to analyse the case accordingly can lead, as here, to the unwelcome realisation that a seemingly impressive

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case is, in truth, a tottering edifice built on inadequate foundations.

12. The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts. Here, as we shall see, the local authority conspicuously failed to do so."

Hearsay evidence

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10. With regard to hearsay evidence, Butler-Sloss LJ in *Re W (Minors) (Wardship: Evidence)* [1990] 1 FLR observed :

“Hearsay evidence is admissible as a matter of law but this evidence and the use to which is put has to be handled with the greatest of care and as such unless the interests of the child make it necessary the rules of natural justice and the rights of the parents are fully and properly observed. ...A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon.”

11. Furthermore Section 1 of the Civil Evidence Act 1995 states :

“Admissibility of hearsay evidence

(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Act—

(a) “hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and

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(b) *references to hearsay include hearsay of whatever degree.*

(3) *Nothing in this Act affects the admissibility of evidence admissible apart from this section.*

(4) *The provisions of sections 2 to 6 (safeguards and supplementary provisions relating to hearsay evidence) do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.”*

The “wide canvas”

12. In Re U (Serious Injury: Standard of Proof); Re B [2004] 2 FLR 263 Butler-Sloss P guided the court on its responsibility to have regard to the ‘Wide Canvas’ of evidence relevant to the findings sought. In her judgment (at page 273) she stated that:

“26. It is for the purpose of satisfying that threshold that the Local Authority seeks to prove specific facts against the parent or parents. Only if it succeeds in that task can its application for a care or supervision order proceed. Thus the preliminary issue of fact constitutes the gateway to a judicial discretion as to what steps should be taken to protect the child and to promote his welfare...for the judge invariably surveys a wide canvas, including a detailed

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history of the parents' lives, their relationship and interaction with professionals. There will be many contributions to this context, family members, neighbours, health records, as well as the observation of professionals such as social workers, health visitors and Children's Guardian.

27. In the end the judge must make clear findings on the issues of facts before the court, resting on the evidence led by the parties and such additional evidence the judge may have required in the exercise of his quasi-inquisitorial function. All this is the prelude to a further and fuller investigation of a range of choices in search of protection and welfare of the children. A positive finding against a parent or both parents does not in itself preclude the possibility of rehabilitation. All depends on the facts and circumstances of the individual cases. In that context the consequences of a false positive finding in care proceedings may not be as dire as the consequence of the conviction of an innocent in criminal proceedings."

13. Therefore the court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in *Re T [2004] EWCA Civ 558* at paragraph 33:

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“Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.”

14. By reference to expert medical evidence, Bracewell J observed in Re B (Threshold Criteria: Fabricated Illness) [2004] 2 FLR 200 that :

“24. Although the medical evidence is of very great importance, it is not the only evidence in the case. Explanations given by carers and the credibility of those involved with the child concerned are of great significance. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form into a clear convincing picture of what happened...”

30. In the current case, it is correct that the evidence upon which the local authority relies is circumstantial evidence. No one saw the mother do anything suspicious and numerous nurses and other witnesses have testified that nothing the mother did put them on enquiry. The mother has made no admissions of any kind and has always denied harming her child. The cogency of circumstantial evidence

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depends on its quality. It can range from the peripheral and unhelpful to compelling and cogent, and therefore it is necessary to test the various elements.”

15. Lady Justice Macur in Re M (Children) [2013] EWCA Civ 1147 stated that:

“11. The judge's assessment of the parents' characters, past behaviour and present attitudes are entirely dependent upon finding primary fact, interpreting and drawing reasonable inference from the same. I agree with Miss Ball QC, they are unassailable on appeal. The judge was obliged to reach her conclusions on the whole of the evidence and was not bound by the opinions of others, however eminent in their field. The judge states the basis of her departure from their views, namely that of her 'good opportunity not only to hear the witnesses' evidence but to observe their demeanour and credibility'.

...

19. Conscious that such comment is trite in first instance judgments it is pertinent to note in this one under review that the judge's description of the mother and father when giving evidence before her is analytical and detailed and obviously draws upon more than their performance in court. It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the

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emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so.”

Lies

16. If the court comes to a conclusion that a witness has lied, it must consider that lie by reference to the warning that was set out in *R v Lucas [1981] QB 720*, in which Lord Lane CJ made clear that in relation to lies told by a defendant :

“The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family.”

17. In *Lancashire County Council v C, M & F (Children : Fact-finding) [2014] EWFC 3* at paragraph [9], Jackson J stated :

“Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated

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questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as 'story-creep' may occur without any necessary inference of bad faith.”

18. In Re M (Children) [2013] EWCA (Civ) 388 Ryder LJ provided further guidance as to how the Court should approach the question of lies when assessing the parent's credibility :

“7. ... [a] Lucas direction ... is used to alert a fact-finding tribunal, that is a jury in a criminal trial, to the fact that a lie told by a defendant does not of itself necessarily indicate guilt because the defendant may have some other reason for lying; that is, he may lie for innocent reasons. A witness may lie because she lacks credibility, or because she has an innocent motive for lying. If she lies about the key fact in issue, that is one thing; if she lies about collateral facts, that may be quite another. A judge of fact may not be able to separate out every fine distinction, but may nevertheless conclude that an allegation is proved, despite the fact that the witness has lied about other matters.

8. This is often simplified in the circumstances of emotionally-charged allegations remembered through the fog of distress and relationship breakdown as a core of truth surrounded by sometimes exaggerated and sometimes badly

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recollected or hazy memory. There may also be an overlay of deliberate untruth arising out of the anger and distress of the breakdown and/or the nature of the application before the court, and I remind myself this was a strongly disputed application. It is also too frequently the case that a Family Judge is faced with internally inconsistent or even untruthful witnesses who are locked in a battle in which their energies and antagonism have sadly come to be focused on who should look after the children or have contact with them.”

Evidence from children, ABE and/or VRI

21. In Re D and Others (Child Abuse: Investigation Procedure) [1995] 3 FCR 581 Connell J said:

“Although the guidelines on interviewing children in the memo of good practice for criminal trials does not have to be strictly adhered to in civil cases the underlying principles are applicable to both care and family cases. Where guidelines were not followed, although evidence is unlikely to be excluded entirely, it is usually of such little weight that the court would not be able to rely upon it.”

22. Furthermore Hughes LJ in Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] EWCA Civ 773, at paragraphs 34 and 35 stated:

“.... Painful past experience has taught that the greatest care needs to be taken if the risk of obtaining unreliable

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evidence is to be minimised. Children are often poor historians. They are likely to view interviewers as authority figures. Many are suggestible. Many more wish to please. They do not express themselves clearly or in adult terms, so that what they say can easily be misinterpreted if the listeners are not scrupulous to avoid jumping to conclusions. They may not have understood what was said or done to them or in their presence.

*For these and many other reasons it is of the first importance that the child be given the maximum possible opportunity to recall freely, uninhibited by questions, what they are able to say, and equally it is vital that a careful note is taken of what they say and also of any questions which are asked. All this and many other similar propositions, most of them of simple common sense, are set out in nationally agreed guidelines entitled *Achieving Best Evidence in Criminal Proceedings*” ...*

By reference to evidence which fell well short of being ABE compliant, Hughes LJ continued at paragraphs 40 – 44:

“40. There is no question of this evidence being inadmissible for failure to comply with the ABE guidelines, and that has not been suggested in argument for either parent. In a family case evidence of this kind falls to be assessed, however unsatisfactory its origin. To hold otherwise would be to invest the guidelines with the status of the law of evidence

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and it would invite the question: which failures have the consequence of inadmissibility? Clearly some failures to follow the guidelines will reduce, but by no means eliminate, the value of the evidence. Others may reduce the value almost to vanishing point.

41. *The question for us in this case is whether the judge was compelled to the conclusion that he must disregard this evidence altogether. Mr Anelay submits that the failures here were so wholesale that that must be the consequence, on the basis that otherwise there is no point in having the guidelines.*

42. *With that submission I do not agree. The purpose of the ABE guidelines is not disciplinary; it is to present the court and for that matter the parents with the most reliable evidence which can be obtained. In every case, the judge cannot avoid the task of weighing up the evidence, warts and all, and deciding whether or not it has any value or none. Everything will depend on the facts of the case. The exercise has perhaps something in common with the one which judges are used to carrying out when confronted with hearsay evidence, often in a family case third or fourth-hand hearsay.*

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43. *On the other hand, I agree with Mr Anelay that the fact that one is in a family case sailing under the comforting colours of child protection is not a reason to afford to unsatisfactory evidence a weight greater than it can properly bear. That is in nobody's interests, least of all the child's.*

44. *It is clear to me that the judge was fully aware of the deficiencies of this evidence. They had been very extensively canvassed in front of him. He expressed himself in understated terms, but he reminded himself of the ABE guidelines and in particular those relating to an initial contact interview. As he reminded himself explicitly, the guidelines were not followed. He held that this was in effect an interview without the proper safeguards of video recording. He said that the failure to record the questions had made the task of evaluating the child's statement a difficult one."*

23. McFarlane LJ endorsed those observations in *Re J (Vulnerable Witness : Sexual Abuse : Fact Finding) [2014] EWCA Civ 875* by holding that:

"The absence of an ABE interview in the process of investigating an allegation of sexual abuse did not rule out consideration of any other evidence there may be of what a complainant had said or now said. However, in this area where the need for a well-

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conducted ABE interview was considered, at the very least, to be a priority when conducting an effective evaluation of allegations, the absence of an ABE-compliant process had to be a matter of note for the judge faced with the difficult task of assessing such material as was available. The fact that the judge did not mention the absence of an ABE interview, let alone bring that absence into her evaluation, was a significant omission from the judgment.”

24. More recently in Wolver Hampton City Council v JA [2017] EWFC 62, Mr Justice Keehan sets out the matters to be considered when determining allegations at paragraph 17,

“17. When considering the allegations made by X and Y whether in ABE interviews or elsewhere I bear in mind and apply the following:

a) no case of alleged sexual abuse where there is an absence of any probative medical or other direct physical evidence to support a finding can be regarded as straightforward: Re J (A Child) [2014] EWCA Civ 875;

b) the greatest care needs to be taken if the risk of obtaining unreliable evidence from a child is to be minimised. Children are often poor historians, and many are suggestible: Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] 2 FLR 1071 at paragraphs 34 to 35, 37, 40 and 42 to 43;

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c) the 2011 revision of Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures;

d) the court must acknowledge and carefully analyse material where there are numerous and substantial deviations from good or acceptable practice in ABE interviews or other procedures adopted for interviewing children and must consider whether or not flaws in the ABE process are so fundamental as to render the resulting interviews wholly unreliable: Re E (A Child) (Family Proceedings Evidence) [2016] EWCA Civ 473 at paragraph 35;

e) a court considering the hearsay evidence of a child must consider what the child has said, the circumstances in which it was said and the circumstances in which any alleged abuse might have occurred: R v B County Council ex parte P [1991] 1 FLR 470 at page 478;

f) the extremely helpful summary of the principles to be applied and approach to be taken in cases of alleged sexual abuse set out by MacDonald J in AS v TH (Fake Allegations of Abuse) [2016] EWHC 532 (Fam).”

25. I am reminded of the important observation by Baker J in A Local Authority v K and Others [2009] EWHC 850 (Fam), where at paragraph 138 he stated as follows:

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“Secondly, they adopt their client's professed position that there is no way that the children would have had the knowledge that they did express in the interviews unless they had experienced these matters first hand. This is, at first, a strong submission and, on viewing the ABE interviews alone, one might find it hard to imagine how the children could possibly have acquired the knowledge about these matters without direct experience. But I am satisfied that much of what the children have said is untrue, including allegations about matters that one might have thought would be outside the experience of children, even in these days where sexual matters are spoken of with greater freedom and licence - for example, the descriptions of group sex and the account of fists being inserted into bottoms. In those circumstances, it is, in my view, less hard to accept that everything the children said was or could have been as a result of things said to them by their mother. The court is aware of research by Professor Ceci and others that has demonstrated that children can come to believe and describe things that are untrue, even things that they say have happened to them directly. The aspects of their accounts that have given me greatest concern have been their comments of direct physical experiences, including a description of ejaculation, the taste of semen and descriptions of male masturbation. I have spent much time wondering whether children can really have given such details without direct experience. In the end, I have concluded that, given my findings that other allegations apparently based on experience were manifestly untrue, it is not impossible that even the vivid accounts of such physical

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experiences provided by A in her first interview, could have been instilled by coaching or leading questions.”

ECHR

26. Finally, I must ensure that each of the respondent’s rights to a fair trial pursuant to article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 are protected. There can be no interference with those rights unless such an interference is in pursuance of a legitimate aim necessary, proportionate and in accordance with the law. I am most grateful to the very helpful assistance of the intermediary who has ensured that the mother has been able to fully participate in these proceedings.

SCHEDULE TWO

Summary of allegations

19 August 2017

1. L is recorded as making the first allegation by stating the following and referring to it as ‘a secret’ (H86, H603) :

“L was pulling his clean pyjama bottom on he stopped and hit his penis as he had an erection, FF asked what is the matter? L replied ‘I don’t like it when that happens as (L mumbled a name but it was not clear) used to bong my private parts’. L then

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started to cry then said 'I can't say anything as I am going to get into trouble as it is a secret' ... daddy's next door neighbour and pointed to his left saying that way wanted to know his name but was frightened of him and I ran off ... I can't tell as I was told it was a secret and I will get into trouble ... H used to touch my private parts ... B would touch my private parts ... B had a pokey private parts and ran at me with it out and B was laughing at me I can't tell I was told it was a secret and I will get into trouble ..."

22 August 2017

2. During a LAC visit, the SW undertook some 'keep safe' (H1097 – H1098) H and L. During discussions about touching private parts, L was asked if anyone had touched his "private", to which he replied that

'B had done this to him and it made him very upset. He said he 'did the right thing' as he told Dad, he said Dad sent B to his room ... being told to keep things a secret and he said B had told him to keep it a secret when this happened'.

When H was asked if anyone had touched his private parts, it was recorded that *'he did not make any disclosures – I asked him directly whether this had ever happened to him and he said no'.*

25 August 2017

3. This is the time that the names "Dan" and "Nab" are mentioned. FF's recoding (H34) states that:

L said "bad touching ... on me. L asked for a pen and paper and then said "can you write it please, I will spell d a n'. FF showed L DAN on the paper and L said "yes next door by Daddy's this

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way (L pointed to his right) hurt my private parts. I was in the toilet with daddy, it was a poo – Dan wanted to pull me down the toilet. Squashed me, Daddy was there. Dan tried to push me down. I asked Dan not to touch my private parts ... N A B, N A B, Nab, the other one ... Dan friend, a boy, white ... he had them bits (L then rubbed FF's day old stubble) wanted to hurt me ... didn't hurt me but nearly did, strangled my neck”.

28 August 2017

4. L is recorded as making further allegations (H34 – H35 and H89 – H90), as follows:

“at daddy's house (L pointed to his penis) it was pokey, my front private parts ... I showed it Mummy and Daddy, they didn't tell me off ... Dan told me not to say about my feelings'. Shortly after this L was adjusting his pyjama trousers at the front but this went on for more than a minute. When asked if he was ok he said 'yes, just playing ... with my front private parts ... because it was getting long and tingly, that's why I was playing with it ... because it was getting long ... I've been shown how to do my private parts, somebody shown me how to pull the skin back and play with it. FF (foster carers) showed me how to wash and clean it, but this was playing and making it grow long and it made me tingle inside, d a d, d a n, Daddy. Daddy showed me how to do it, play with it'.

... I did it at daddy's a lot. H did it at daddy's, H, L, d a n dan, and d a, no one else. H, L, Dan, and a person. No, just H, L, dan, that's it ...”

29 August 2017

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5. L and made further allegations (H1208 – H1209):

“L : Dan tried to touch my front private parts! Daddy said NO Dan, go home, but Dan tried to touch my front one and then he (L aimed at punch) me and it hurt ... I had to go to hospital ... Dan also hit my head and that bled, it really, really hurt and it had lots of blood, I went to hospital too ...

L : yes you do H, you did at Daddy’s house, and Dan did with you.

H : only in the bath, he tried to touch it but daddy said no

L : no Dan touched it by the front sofa, you, me, B, Dan, daddy and mummy

H : daddy’s front private parts grew

L : no they did not, he and mummy were watching

H : no we were all naked but mummy had a t-shirt on, we were all touching our front private parts

L : no mummy and daddy watched

H : not by the sofa, mummy only had a t-shirt on and was touching her private parts.

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H : daddy rubbed his front private parts like this FF (H took hold of one of FF's fingers and simulated pulling the skin back with one hand and rubbing the end of the finger with his other hand)

L : daddy then needed to go to the toilet, so did Dan, they didn't go together, Dan went after daddy came back, his front private parts were smaller after his wee

L : so was dan's when he came back from his wee

...

L : FF I didn't ever touch anyone's front private parts. Dan also touched my back private parts. He punched it lots of times and scratched it. He had long nails and it cut me so much it bled lots and lots. FF I am not lying'."

31 August 2018

6. H and L underwent pre-VRI assessments (H1185 – H1186 and H1186 – H1187).

H alleged that 'if he did something daddy did not like then daddy would really shout and he would have to go to his bedroom and stay there ... daddy hurt his head by slapping and punching it with his hand. He did this lots of time and mummy was there who said 'daddy stop'. Daddy then punched mummy's arm. He did this to LM and BM too, and it was because they lied about going on their scooters.

L said daddy hits his hands and feet, and mummy is there but she goes to a different house and says 'bye bye' ... H ... Dan at the seaside ... he punched HM ... Their front and back private parts being touched and that

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everyone was there (mummy, daddy, BM, HM, LM, DAN, NAB and ED)' (H1185 – H1188).

7. During his VRI assessment L alleged '*...physical incidents, and at times pointed to his genitals but made no definite sexual disclosures. He said someone wanted to punch and kick his private parts <pointed to his genitals> and said ?on my head? <patted head> and 'on my arm' <patted arm>. He said this was (D), next door to Daddy's? and said 'because he wanted to'. Daddy was there and LM had been on his bike at the front of the house, and he said (D) wanted to push him off his bike ... he then repeated (D) wanted to hit my private body parts <pointed to his genitals> and then said this was at daddy's house in his bedroom, then said (D) was not in his bedroom ...'* (H1186 – H1187).

6 September 2017

8. L made further allegations (H43 – H44) :

"... Dan, he wanted to see my private parts, he called it willy not private parts as we do here and my bottom was poo, he told me to see my willy, at daddy's house, daddy was at work and mummy was looking after L, H and B ... Dan said to see my willy. Every single day, on a Monday, Mummy and daddy watched ... daddy said no I said NO ... he still saw them as he pulled my shorts down. I don't like it when I am touched. Dan made me, he didn't make H or B, he didn't. we wee'd on me as well. I didn't like it FF I didn't. Nab did it as well ... mummy and daddy watched. They said no ... B, Nab and Dan all had the same bedroom, he had his bed under the window. Dan and Nab wee'd on my face. And daddy too, he watched no and he said no. It was sticky wee not like mine very runny. They made my private parts go long and hard and pokey uppy. They touched it like this (L put his index finger of his left hand out and rubbed it up and down with his index and middle fingers of his right hand) they needed a wee badly as they had a hand down their pants holding their wee in before they weed on my face. Their private parts were very long and thick and they weed but went down afterwards. I needed a wee and I went to the bathroom and I am younger than them. there's was not like mine it was sticky and mine was runny, normal runny."

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9 September 2017

9. On this date L made the following allegation to the foster carers (H1237 – H1238) :

“L : Daddy hit me with a fork (L performed a thrusting action towards my stomach) with the pokey out things hitting me here (L pointed to just above his tummy button on his t shirt) ... there was blood everywhere FF. It hurt SO much. He did it more than once. Lots.”

14 September 2017

10. It is recorded by FF that L made the following allegations (H46 – H47) :

“L ... at daddy’s house, it was breakfast time. And in the bathroom, mummy and daddy were there watching. They were all not wearing any clothes and mummy did, mummy wore clothes. My private parts hurted lots and were really sore. Daddy was sat on the sofa. I got wee’d on, lots and lots of times. Dan and Dab the crab and D D Daddy ... sticky wee and runny wee like mine. They touched their front private parts. Sometimes, they wee’d in the toilet and sometimes on me. Their front private parts were very big and poke ... once they wee’d they went down ... in the bathroom over me, I didn’t do anything wrong FF I didn’t I didn’t ... it is cos I didn’t know how to say this bits to you and I was frightened of saying it but I know I have to to feel better ... I know but it was not my fault and I don’t want you to think it was ...”

16 September 2017

11. Whilst at the cinema, B told the foster carer that ‘L had looked under the joining partition between the cubicles to see his parts’ (H513). Later back

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at his foster home, L made further allegations to the foster carer. The record states as follows (H104) & (H307 – H308) :

“When we got home L was in the hallway and called FM and FF. FM was in the kitchen and called back "yes". FF was next to L taking off his coat at the bottom of the stairs and turned round with a "hello". FM appeared.

L "I did look under the wall in the cinema toilet"

L "I didn't see anything I am getting muddled up"

FM "With what, why"

L "I miss seeing B's private parts as I saw them all the time at daddy's house"

L " and I saw Daddy's, xxxxx's, xxxxxx, B's and L's"

L "they all were naked, I had clothes on but they all were playing with their front private parts"

L "we always saw all of them with no clothes on"

L "I miss B"

L "I did have no clothes on at Daddy's house lots of times walking round"

L "B, H and me were all naked and showing our front private parts"

L "Mummy & daddy saw"

Please can I go and watch the Lego movie?

FM "Of course you can, it is on the table I will come and put it on" L walked off followed by FM and L was happily sat on the sofa watching the Lego movie.”

19 September 2017

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12. H and L (H834 – H850 and H851 – H870) underwent VRIs. Neither child made any allegations in the course of the interviews.

21 September 2018

13. The father (H870 – H 937) and the mother (H938 – H986) each undertook a Police interview under caution. They denied the allegations of sexual abuse.

29 September 2017

14. H and L underwent medicals with Dr. Louise Watson (Consultant Paediatrician) (H74 – H76 and J157 – J159). The report states: at the following :

“I also note the previous history of soiling and this has now begun to settle since being in foster care. This suggest that an underlying medical reason for H’s soiling is unlikely, and that this is more likely related to his past experiences of emotional distress and disturbance.” (H75 – H76)

15. In respect of L, the report states that:

“I note the previous history of soiling that this has now entirely settled since being in foster care. Medication previously prescribed has not been needed, and this suggests that there is no underlying medical reason for L’s soiling, and that this was more likely due to ongoing emotional distress and disturbance.” (H78)

2 October 2017

H and L are recorded as having the following conversation (H1121 – H1126):

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"L – "FF I am upset"

FF - "Why L, what's the matter"

L - "the tears, I am frightened"

L - "you and FM wont believe me"

FF - "About what" "of course we will"

L - "What happened"

FF - "What did happen"

L - "being weed on by XXXX, Mummy, Daddy, H and B at Daddy's house"

L - "It upset me very much, I did say no and I cried proper tears not pretend baby tears like I have just done"

L - "it was sticky wee and runny wee FF".

L - "H and B had runny wee and XXXX and Daddy had sticky wee"

L - "B and H did not want to FF, they was made to just like I did was"

L - "I had to wee on them too, mine was runny wee"

H and FM came back from shopping, FM put the shopping in the boot and H was strapped into his car seat, FF drove off.

L - "H I was telling FF about being weed on at Daddy's house"

H - "Really, who by"

L - "You, B, XXXX, Daddy & Mummy, do you remember"

L - "it happened lots"

H - "I didn't always have to wee sometimes I had to watch"

L - "yes you and B watched sometimes, sometimes with mummy if she was not weeing but she did say what to do sometimes if she watched didn't she"

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H - "yes"

Quietness for the rest of the journey and then when FM opened the house front door L - "Can I talk to you please FF about the touching, the good touching and the bad touching"

FF - "Of course"

L - "can FM please be there"

L - "FM, please can you sit with me and FF when I talk about the touching at Daddy's house"

L - "H will you talk with me please"

H - "ok"

L, H, FM & FF all walk in to the lounge and sit on the sofa's

L - "I am telling the truth"

FF - "I know you are, you are being very brave"

L - "H it is the truth isn't it"

H - "yes little brother"

H - "I am telling the truth too FM"

FM - "I know you are"

L - "the weeing at Daddy's house was very upsetting wasn't it"

H - "yes"

L "everyone had no clothes on"

H "mummy sometimes did have clothes on if she was watching"

L "yes but she did wee as well"

H "yes she did"

L "H and B were made too and it was runny normal wee"

L "Daddy, XXXX mainly did do sticky wee"

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L - "the sticky wee was very very very very very very VERY VERY hot and sticky"

L - "It was as hot as the thing in the kitchen you make the cup of tea from"

L "the tall black and silver thing"

H "the kettle"

L "Yes the kettle the sticky wee was hot like the kettle gets"

L "the stick wee sometimes looked like the milk when it goes in a cup of tea but thicker"

L "I really didn't like it FF and I was crying so so so so much, proper proper tears not the silly baby tears"

H "I didn't like it FF, it was horrid horrid horrid"

L "are you ok H"

H " yes little brother are you"

L "yes thank you" "please can you would you like a hug H"

H "yes please"

H and L got up of their sofas and hug each other by the guinea pig cage, no words just a hug lasting about 30 seconds

L "I love you H"

H "I love you too little brother"

L "This is the truth FM, FF it is"

H "Yes it is"

FM "I am sure it is boys"

L "XXXX crept into our bedroom and weed at me FF I was asleep but it woke me up and I cried"

H "your crying woke me and B up too, I was frightened"

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L "they had no clothes on and their front private parts were very big and sticking out and they went down after they weed on me"

L "before they weed sometimes they would be rubbing their front private parts really hard and hit the front of them, sometimes it went bigger when they did this"

H "it was not nice, I did not like it and they growled sometimes when they weed"

L "it was a very funny noise like when you hit your foot aaahhh"

...

H "it is not good FF they frightened me when they weed on me, the sticky wee was thick like toothpaste, thick and sticky and creamy looking"

H "I had to touch front private parts"

H "Daddy made me wee on my face, I had to point my front private parts upwards to my face and wee, it was disgusting and not nice, I cried so so much proper tears FF"

H - I had to touch front private parts, the wobbly ones, Daddys' XXXX, and Mummy but hers was different to them and not wobbly or big and thick"

H "Daddy made me FF, I didn't want to"

H "And I had to touch and rub them and flick the end, as well as bite them"

H "my front private parts were bitten by Daddy, XXXX & Mummy and L and B"

H "I didn't like it when my front private parts were bitten FF and I did not like having to bite a front private part"

H "it was horrid horrid horrid and I was very upset"

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H " I had to poo on them as well FF, Daddy made me, he held B and L and made me walk back to them and pull my pants down and poo on their front private parts"

H stood up and simulated pulling his trousers down and squatting

H "just like this FF, but XXXX, Daddy and XXXX would hold me here (H put his hands on his shoulders and pressed down) while I pooped on them"

3 October 2017

16. During a LAC visit to L and H, L is reorded in the e-mail dated 4th October 2017 (H80) as stating:

"LAC visit : Just to let you know during a LAC visit yesterday L disclosed to me E D, Mummy, Daddy, B, H weed at me. It made me cry. It was got wee. D E and B hurt me with a knife."

17. Following this visit, when L and H were being put to bed, the following allegations were made (H109) :

"After tucking L in to bed and saying good night I went and tucked H in and also said goodnight. I then went back to L to check if he was ok as I could hear singing. I knocked on his bedroom door and he said come in. I then asked him if everything thing was ok, and his reply to the question was, can you please stay whilst I go to sleep. So I sat in the chair buy his bed. Once I had sat down L said to me "XXXXXXXXX can I please talk to you about the Gator Goodfellow bad touches" I replied with "of course you can L". I shouted down to XXXXX that L had asked me to stay in his room whilst he went to sleep. L then went on to say at Daddy's house XXXXX an XXXX did touch my front

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private parts and I did not like it. I did ask them to stop as he made me cry but them just carried on. L then gave a big yawn said night night XXXXXX I safe now. I replied with yes indeed L you are very safe and it's not your fault. L was now fast asleep and XXXXX left his bedroom and closed the door.”

5 October 2017

18. This concerns B at school. The incident is in an e-mail (H81), a handwritten note (H163) and in a report from the school (H110):

“B ... when I asked him what did he touch, he said I'm really nervous I don't want to tell you.”

“While I was reading the "care-ageous Kids" safety book with B, when we got to good touches and bad touches B said, at home, not XXXXXX, I touched everything and was bad. When I asked him what did he touch, he said I'm really nervous I don't want to tell you. Following this B soiled himself in school. This was the first time he has done this to their knowledge.”

9 October 2017

19. L is noted as stating (H82, H112 and H313 – H314) :

“L ... I am upset by the weeing that happened to me at daddy's house by (D) and (E), daddy and mummy and H and B. I was very sad and upset and said stop stop stop please don't. Everyone was laughing and they all had their front private parts out. Daddy, mummy all made me have their front private parts in my mouth so did H and B they were made to by daddy and mummy and (D) and (E). I had to put my front private parts in their mouths too, daddy, mummy (D) and (E) H and B, I didn't

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want to I was made to by daddy, it was not nice, I was frightened and scared and it was not nice, horrid ... we were at daddy's house. Mummy was taken back to her house as she did not have any clothes at daddy's house. (D) and (E) had their front private parts in my mouth, sometimes together and sometimes only one. It was really not nice. I really did not like it when people had a wee in my mouth, it was sometimes wet wee from B and H and mummy, daddy. (D) and (E) did sticky wee in my mouth. I had to drink it when they weed in my mouth it was yucky yucky and not nice. This is the truth and the last of my secrets that I was told not to talk about to anyone as I would not be believed.” (H82)

“When we got home L was very teary and eventually wanted a hug and asked me can he talk to FM & me when she came in, about 2 minutes later XXXXX appeared and L lead her in to the sofa and asked us both to sit on the small sofa with him in between us. H was sat on the small armchair by the patio doors doing his reading.

L - "I am sad"

FM " what Is the matter L"

L - "I am upset by the weeing that happened to me at daddy's house by XXXX, Daddy, Mummy and H & B"

L " I was very sad and upset and said stop stop stop, please don't"

L "everyone was laughing and they all had their front private parts out"

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L "XXXX, Daddy, Mummy all made me have their front private parts in my mouth so did H & B, they were made to by daddy and mummy and XXXX"

L "I had to put my front private parts in their mouths to, Daddy, mummy, XXXX, H & B, I didn't want to I was made to by Daddy, it was not nice FM, I was frightened and scared and it was not nice, horrid"

L hugged FM very hard and was crying, FM was reassuring L that he was a brave boy and L held FF's left hand, after a few minutes L sat up and then continued

L "We were at Daddy's house"

L "Mummy was taken back to her house as she did not have any clothes at Daddy's house"

L "XXXX had their front private parts in my mouth, sometimes together and sometimes only 1, it was really not nice,"

L "I really did not like it when people had a wee in my mouth, it was sometimes wet wee from B & H and Mummy. Daddy, XXXX did sticky wee in my mouth"

L " I had to drink it when they weed in my mouth it was yucky YUCKY and NOT NICE"

L "this is the truth and the last of my secrets that I was told not to talk about to anyone as I would not be believed" (H112) & (H313 – H314)

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10 October 2017

20. The following recordings relate to H:

“H ... when daddy, (D) and (E) and B and L put a finger up my private parts they were real tears ... it was my back private parts. H got out of bed and pointed to his bottom ... it was not nice, not nice, Daddy made B & L do it as well to me and I had to do it to them. Daddy showed us, (D) and (E) knew what to do I did not like it.” H84

“H ”I am sorry FF it was baby tears I did earlier”

FF "do you always do baby tears?"

H "not all of the time, when Daddy, XXXX and B & L put a finger up my private parts they were real real tears"

H "It was my back private parts"

H got out of bed and pointed to his bottom

H "It was not nice, not nice FF, Daddy made B & L do it as well to me and I had to do it to them"

*H "Daddy showed us, XXXX knew what to do I did not like it".
H318*

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16 October 2017

21. FF recorded L to state :

“L went into the bathroom and after taking his pants off he turned to get into the bath and while facing FM L thrust his hips forwards and backwards twice and then laughed as he then played with his penis (in a similar motion to what XXXX had said on Friday about strumming a guitar) ...” (H427)

18 October 2017

22. H made the following allegations at school to the head teacher :

“H was doing some maths in my office with another child. When they finished the task he suddenly said B's got spots - he lives with XXXXX. The other child asked who XXXXX was and H explained that he, L and B live with carers. The other child said why? and H said "because my daddy hit me on the head, the privates and the bum". I asked the other child to leave and H then said "mummy hit L and B and daddy punched mummy on the head, the privates and the bum". He then said "not XXXX and XXXXX". I asked who are XXXX and XXXX and he said "living with daddy and mummy, XXXX and XXXXX. They punched private parts - everybody's". (H114) & (H170)

20 October 2018

23. H stated: made the following allegations:

“I touched XXXX front private parts It was bad touching, very bad touching ... Daddy told me to do it when we were at

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Daddy's house ... I do it most weeks only in the changing rooms to XXXX and others ... daddy told me to touch people ... daddy told me off and told me to touch people ...” (H276)

10 November 2017

24. B underwent a medical examination by Dr. Louise Watson (Consultant Paediatrician) (H987 – H989). She reported there were no physical signs suggestive of sexual abuse (H988). She noted :

“Behaviour at home is generally settled with his carers. He is however an active boy who is on the go, and tends to touch things inappropriately. His foster carer has noted some rather sexualised behaviour. For instance, B tends to insist on kissing people on the lips rather forcefully; has also sometimes makes suggestive comments about the appearance of adults or might smack adult women on the bottom as they pass.” (H987)

24 November 2017

25. Following a chance meeting with the father, the FF recorded the following:

“H asked Dad – when we stayed at your house did you mean to punch and hit us (H then animated throwing a punch) and dad bent down and said something into H's ear that I could not hear, dad then stood back up.” (H322)

12 December 2017

26. FF's recording state that:

“H told FF and FM that he was ‘silly at school for showing his private parts’.” (H1327)

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7 & 8 January 2018

27. B's foster care notes state:

"... B ... I was in the kitchen later in the afternoon then B passed me and slapped my bottom. I asked him why did he do that and he replied 'cos I love you'. Before bed we were sitting on the sofa ready to read a book and he put his arm around me as in neck and shoulders. I asked him to 'move his arm as it wasn't the right choice' and he apologised and removed his arm.

... as I left S's B blew me a kiss quite seductively. These continued all afternoon until I said 'please stop blowing me kisses we will always be friends'. that evening we sat to read a book on the sofa and B wanted us both under his blanket. I told him his blanket is only for him." (H1172u)